The first of these was a cross-word puzzle case where the competitor (or contributor) himself selected which of a large number of possible solutions to a cross-word puzzle had already been selected as the correct solution by the newspaper conducting the competition. It was a case where, in the words of Lord Hewart, C.J. "persons undertake to make a series of shots at something already decided behind their backs" and again "where the competitors are invited to pay a certain number of pence to have the opportunity of taking blind shots at a hidden target". And His Lordship concluded "I see the word 'lottery' written all over this scheme".

Moore v. Elphick[11] was a football pools case and Humphreys J. dealt with such pools in the following terms :—

> "Father's Pools Club was formed to make use of what are called football pools, a form of combined betting, a modern institution which has eliminated the bookmaker, who used to be one of the two parties to the contract of betting as one used to understand it. By the introduction of what used to be called *pari mutuel*, which afterwards became known as a totalisator scheme, there is now, I suppose, in constant use in the football season at all events, a scheme whereby competitors bet with each other, and the part which would have been played by the bookmaker is now played by someone who merely collects the bets from a large number of people
> .....
> That involves every person who enters one of those pools entering up once a week, because the football matches are played on Saturday — those which are the subject of these pools — in some form or other showing, if it is a horse race, what particular horse or horses, or, if it is a football match, which particular contestant he wants to back to win."

The Court went on to hold that the system of gambling on such pools with which they were concerned was not a lottery but they did so not on the ground that betting was involved but on the ground that the actual betting in question involved an element of skill. This is clear from the whole tenor of both judgments in the case and in particular from the following passage from the judgment of Cassels J. :—

> "A scheme must be looked at as a whole. If chance predominates and is the one outstanding feature, then it comes within the definition of a lottery as laid down by the cases. For instance, it has been decided that it is mere chance that a person will solve a puzzle, of which there are several solutions, in exactly the same way that someone else has already solved it. In this case the justices found that the appellant exercised skill based upon his knowledge of football form, and on his knowledge of what has happened in the football world during the past 10 years."

It is thus clear that in England a scheme whereby prizes are distributed by chance is not rescued from being a lottery either by the fact that the prizes are not paid out of a fund contributed by those taking part or by the fact that the prizes are of a predetermined amount or by the fact that the contributor himself nominates the contingency on the occurrence of which the prize is to be paid to him. And it seems to me that these three considerations are the only ones on which Wilson J. has relied to rescue the so-called "100 characters lottery" from being a lottery within the meaning of our Ordinance.

The truth, of course, is as was said by Humphreys J. in *Coles'*[10] case, *supra* "there will seemingly be never any finality on the question what is a lottery", but as regards the "100 characters lottery" I have no hesitation in respectfully adopting the language of Lord Hewart in *Coles'*[10] case *supra* and saying that I see the word "lottery" written all over it.

I have no hesitation in dismissing the present appeal but in the circumstances I am prepared to give my certificate to enable the matter to be taken further.

Appeal dismissed.

ANNAMALAI CHETTIAR v. YEOH KEE TIN (m.w.)

[C. A. (Mathew C.J., Buhagiar and Good JJ.) January 12, 1956]

[K. L. — F.M. Civil Appeal No. 45 of 1955]

Landlord and Tenant — Claim for possession — Where rent at a lawful rate has been in arrears for fourteen days.

In this case the landlord-respondent claimed to eject the tenant-appellant after notice to quit on the ground that the tenant had been in arrears with rent for the months of September, October and November 1952. The learned trial Judge held that every material allegation in the plaint was admitted in the statement of defence and that the defence disclosed no answer to the claim, and he gave judgment for the landlord as prayed in the plaint. In his defence the tenant raised the question of the standard rent; in para. 2 of the defence he stated that the rent of $130 a month was in excess of the standard rent and in reply to the learned trial Judge he said that the rent should be $100 a month. The main ground of appeal was that the learned trial Judge was wrong in holding that the parties were not at issue on any point of law or fact.

Held: (1) even assuming that the standard rent was $100 a month, the rent paid by the appellant was not sufficient to cover the amount of rent due for three months and therefore the learned trial Judge was correct in finding that the appellant was in arrears of rent for fourteen days and in making the order for ejectment;

(2) the learned trial Judge did not have sufficient evidence before him to order the appellant to pay the respondent the amount due as arrears of rent;

(3) the case must be referred back to the High Court for the determination of the standard rent, in order to find out the actual amounts due to the respondent for rent.

Case referred to :—

(1) *Woon Onn v. Tan Yee Gek* (1950) M.L.J. 231.

COURT OF APPEAL.

Lall Singh Muker for the appellant.

Ng Ek Teong for the respondent.

Buhagiar J. (with whom **Mathew C.J.** and **Good J.** agreed) : — The claim in this case was by a landlord (respondent) to eject a tenant (appellant) after notice to quit on the ground that the tenant had been in arrears with rent for months of September, October and November 1952.

The learned trial Judge held that every material allegation in the plaint was admitted in the statement of defence and that the defence disclosed no answer to the claim, and he gave judgment for the plaintiff as prayed in the plaint.

It may here be pointed out that before the trial Judge no oral evidence was taken as counsel for the plaintiff submitted that the case was proved by admission and by the documents. In his defence the defendant raised the question of the standard rent; in paragraph 2 of the defence he stated that the rent of $130 a month was far in excess of the standard rent and in paragraph 6 it was alleged that as the plaintiff had been receiving rent far in excess of the standard rent the defendant was not in arrears of rent for any period in the sum pleaded. The position on the pleadings was explained by the trial Judge to the defendant who, in reply, stated that he did not pay the rent as there had been an unlawful increase of rent and that the rent should be $100 a month.

The main ground of appeal argued before this Court was that the learned trial Judge was wrong in holding that the parties were not at issue on any point of law or fact; one point on which the parties were at issue was with regard to the lawful rent of the premises and the burden of proving what was the lawful rent was on the plaintiff; evidence should have been taken on this point.

In support of the proposition that the burden of proof lay on the plaintiff, counsel for the appellant relied on section 12 of the Control of Rent Ordinance, 1948, where it is laid down in the proviso that the provisions of that section do not apply to ejectment for non-payment of rent where rent *at a lawful rate* has been in arrears for fourteen days. It was submitted by counsel for the appellant that before a landlord can succeed in an application for an order of ejectment without the prior permission of the Board having been obtained he must prove that the rent in arrears was rent at a lawful rate. I do not think that this is so; there is nothing in that section affecting the general principles of evidence regarding the burden of proof as laid down particularly in section 103 of the Evidence Ordinance, 1950; under that section the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact is to lie on any particular person. In this case the tenant (appellant) alleged that the rent of $130 a month was in excess of the standard rent; the burden of proving such fact was, therefore, on him and there is nothing in section 12 of the Control of Rent Ordinance, 1948 to shift the burden on the landlord. In support of his submission counsel referred to the case of *Woon Onn v. Tan Yee Gek*[1]. That case does not deal with the burden of proof; there was evidence as to the standard rent and the Court held that as the tenant had been paying rent in excess of the standard rent, any excess paid could be set-off against the standard rent due; after such set-off the Court found that rent at a lawful rate had not been in arrear.

The determination of the standard rent was necessary to establish :—

(a) what amount, if any, was paid by the appellant in excess of the standard rent and whether such excess could be set-off against the rent due at a lawful rate; and

(b) what amount of rent at a lawful rate was still due to the respondent.

With regard to the first point, the appellant alleged that the standard rent was $100 per month; even assuming that allegation of fact to be correct the amount paid by the appellant at the rate of $130 a month is not sufficent to cover the amount of rent, at a lawful rate, due for three months. The learned trial Judge was, therefore, correct in finding that the appellant was in arrears of rent for fourteen days and in making an order for ejectment.

With regard to the second point it is necessary to to have further evidence, apart from the allegation of the appellant, as to the standard rent, before the amount actually due to the respondent can be fixed. The learned trial Judge did not have before him sufficient evidence to order the appellant to pay the respondent the sum of $390, for arrears of rent, and double rent at the rate of $260 a month from the 1st day of August, 1955 to the date of delivering of possession of the premises.

I would therefore dismiss the appeal as regards the order of ejectment and with regard to the order for payment of the amounts abovementioned I would refer the case back to the High Court for the determination of the standard rent and the amounts actually due to the respondent.

Costs of the appeal to be borne as to three-fourths by the appellant and as to one fourth by the respondent. Three-fourths of the deposit to be paid out to the respondent and one-fourth to the appellant.

Order accordingly.